DZH

268 NLRB No. 90

D--9851
Las Vegas, NV

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHECKER, INC., d/b/a CHECKER CAB CO., YELLOW CAB COMPANY OF NEVADA, INC.

and

Case 31--CA--12716

INDUSTRIAL, TECHNICAL AND PROFESSIONAL EMPLOYEES DIVISION, NATIONAL MARITIME UNION OF AMERICA, AFL--CIO

DECISION AND ORDER

Upon a charge filed on 20 December 1982 by Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL--CIO, herein called the Union, and duly served on Checker, Inc., d/b/a Checker Cab Co., Yellow Cab Company of Nevada, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint on 27 January 1983 against Respondent, alleging that Respondent has engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 29 September 1982, following a Board election in

Case 31--RC--5251, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about 21 December 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On 9 February 1983 Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and raising certain ''affirmative defenses.''

On 21 March 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 24 March 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Thereafter, Respondent filed an opposition to the Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and opposition to the Motion for Summary Judgment, Respondent admits the request and its refusal to bargain with the Union, but denies that the Union is the properly certified exclusive

---

[1] Official notice is taken of the record in the representation proceeding, Case 31--RC--5251, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

collective-bargaining representative of the employees in the unit described below. Respondent reiterates its contention in the underlying representation proceeding that the Acting Regional Director erred by overruling Respondent's objections to the election and further contends it was denied due process of law by the Acting Regional Director's refusal to direct an evidentiary hearing on the objections.

Review of the record herein reveals that in Case 31--RC--5251 the petition was filed on 9 December 1981. On 30 December 1981 a Stipulation for Certification Upon Consent Election was approved by the Regional Director, and the election was conducted on 13 January 1982. At the conclusion of the balloting, the tally revealed that 399 votes were cast for, and 135 against, the Union.[2] On 20 January 1982 Respondent timely filed objections to the election, alleging in substance that: (1) the Union distributed a handbill 2 days before the election which implied that Respondent was responsible for assaults and robberies perpetrated on its employees; (2) in another handbill, the Union improperly promised employees a pension plan fully paid for by Respondent; and (3) the union observers and the Board agent engaged in various acts of misconduct in the polling area.

Following an investigation, the Acting Regional Director issued his Report on Objections in which he found that Respondent's objections were insufficient to warrant setting aside the election, and recommended that the Board overrule the objections in their entirety. As the Union had received a majority of the ballots cast, the Acting Regional Director further recommended that a certification of representative issue. Thereafter, Respondent filed timely exceptions to the Acting Regional Director's report in which it

---

[2] There was one challenged ballot, a number insufficient to affect the results of the election.

reiterated the arguments previously rejected by the Acting Regional Director, and contended that the Acting Regional Director erred by failing to make credibility resolutions and by failing to order a hearing on Respondent's objections. On 29 September 1982 the Board issued a Decision and Certification of Representative [3] in which it adopted the Acting Regional Director's findings and recommendations, and certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit.

Following a request by the Union on or about 29 September 1982 that Respondent engage in collective-bargaining negotiations with the Union, Respondent, on or about 21 December 1982, refused to recognize and bargain in good faith with the Union as the exclusive bargaining representative of its employees in the certified unit.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

---

[3] Not published in bound volumes of Board Decisions.

[4] See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is, and has been at all times material herein, a Nevada corporation, with an office and principal place of business located in Las Vegas, Nevada, where it has been engaged in the business of furnishing taxicab transportation and related services. In the course and conduct of its business operations, Respondent annually purchases and receives goods or services valued in excess of $50,000 from sellers or suppliers located within the State of Nevada, which sellers or suppliers receive such goods in substantially the same form directly from outside the State of Nevada. Respondent, in the course and conduct of its business, annually derives gross revenues in excess of $500,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All taxicab drivers, including extra-board drivers, employed by the Employer at its 90 W. Oakey, Las Vegas, facility, but excluding all other employees, including dispatchers, mechanics, gas jockeys, body repair employees, guards and supervisors as defined in the Act.

2. The certification

On 13 January 1982 a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 31, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on 29 September 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about 29 September 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about 21 December 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since 21 December 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among

the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Checker, Inc., d/b/a Checker Cab Co., Yellow Cab Company of Nevada, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All taxicab drivers, including extra-board drivers, employed by the Employer at its 90 W. Oakey, Las Vegas, facility, but excluding all other employees, including dispatchers, mechanics, gas jockeys, body repair employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 29 September 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about 21 December 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amdended, the National Labor Relations Board hereby orders that the Respondent, Checker, Inc., d/b/a Checker Cab Co., Yellow Cab Company of

Nevada, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All taxicab drivers, including extra-board drivers, employed by the Employer at its 90 W. Oakey, Las Vegas, facility, but excluding all other employees, including dispatchers, mechanics, gas jockeys, body repair employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its 90 W. Oakey, Las Vegas, Nevada, facility copies of the attached notice marked ''Appendix.''[5] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by

---

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. 24 January 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All taxicab drivers, including extra-board drivers, employed by the Employer at its 90 W. Oakey, Las Vegas, facility, but excluding all other employees, including dispatchers, mechanics, gas jockeys, body repair employees, guards and supervisors as defined in the Act.

CHECKER, INC., d/b/a CHECKER CAB CO.,
YELLOW CAB COMPANY OF NEVADA, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213--209--7357.